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Multimedia KSDK, Inc. and International Brotherhood of Electrical Workers, AFL-CIO, Local No. 4. Case 14-CA-25856

February 29, 2000

DECISION AND ORDER

BY CHAIRMAN TRUESDALE AND MEMBERS FOX AND LIEBMAN

Pursuant to a charge filed on December 8, 1999,¹ the General Counsel of the National Labor Relations Board issued a complaint on December 23, 1999, alleging that the Respondent has violated Section 8(a)(5) and (1) of the National Labor Relations Act by refusing the Union's request to bargain following the Union's certification in Case 14-RC-11882. (Official notice is taken of the "record" in the representation proceeding as defined in the Board's Rules and Regulations, Secs. 102.68 and 102.69(g); *Frontier Hotel*, 265 NLRB 343 (1982).) The Respondent filed an answer admitting in part and denying in part the allegations in the complaint.

On January 24, 2000, the General Counsel filed a Motion for Summary Judgment and Brief in Support. On January 28, 2000, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed a response.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Summary Judgment

In its answer the Respondent admits its refusal to bargain but attacks the validity of the certification on the basis of its disagreement with the Board's unit determination in the representation proceeding.

All representation issues raised by the Respondent were or could have been litigated in the prior representation proceeding.² The Respondent does not offer to ad-

duce at a hearing any newly discovered and previously unavailable evidence, nor does it allege any special circumstances that would require the Board to reexamine the decision made in the representation proceeding. We therefore find that the Respondent has not raised any representation issue that is properly litigable in this unfair labor practice proceeding. See *Pittsburgh Plate Glass Co. v. NLRB*, 313 U.S. 146, 162 (1941). Accordingly, we grant the Motion for Summary Judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all material times, the Respondent, a South Carolina corporation, with its sole office and broadcasting facilities in St. Louis, Missouri, is engaged in the operation of a television broadcasting station.

During the 12-month period ending November 30, 1999, the Respondent, in conducting its business operations, derived gross revenues in excess of \$100,000 and during the same period of time, purchased and received broadcast programming and news services valued in excess of \$50,000 directly from points outside the State of Missouri.

We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

A. The Certification

Following the election held January 13, 1998, the Union was certified on October 13, 1999, as the exclusive collective-bargaining representative of the employees in the following appropriate unit:

All producers, assignment editors and tape coordinators employed by Respondent in the news department, EXCLUDING directors, managers, engineers, camera persons, talent employees, office clerical and professional employees, guards, managerial employees, and supervisors as defined in the Act and all other employees.

The Union continues to be the exclusive representative under Section 9(a) of the Act.

B. Refusal to Bargain

Since November 8, 1999, the Union has requested the Respondent to bargain and, since December 1, 1999, the Respondent has refused. We find that this refusal constitutes an unlawful refusal to bargain in violation of Section 8(a)(5) and (1) of the Act.

¹ The Respondent claims it is without knowledge sufficient to admit or deny the veracity of the balance of the complaint allegation pertaining to the filing and service of the unfair labor practice charge in this case, but admits that a copy of the charge was received on or about December 9, 1999. The Respondent's asserted lack of knowledge as to certain aspects of this allegation does not raise any issues warranting a hearing.

² The Respondent's answer denies par. 5(a) of the complaint which sets forth the appropriate unit, stating that the unit is inappropriate due to the inclusion of producers and assignment editors, who the Respondent asserts are statutory supervisors. We find that the Respondent's denial does not raise any litigable issues in this proceeding. As set forth in the General Counsel's brief in support of its Motion for Summary Judgment, the appropriateness of the unit was considered and decided by the Board and Regional Director in the underlying representation proceeding. Accordingly, we find that the appropriate unit is as

stated in the complaint and the Respondent's contentions do not raise any issues warranting a hearing.

CONCLUSION OF LAW

By refusing on and after December 1, 1999, to bargain with the Union as the exclusive collective-bargaining representative of employees in the appropriate unit, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has violated Section 8(a)(5) and (1) of the Act, we shall order it to cease and desist, to bargain on request with the Union and, if an understanding is reached, to embody the understanding in a signed agreement.

To ensure that the employees are accorded the services of their selected bargaining agent for the period provided by the law, we shall construe the initial period of the certification as beginning the date the Respondent begins to bargain in good faith with the Union. *Mar-Jac Poultry Co.*, 136 NLRB 785 (1962); *Lamar Hotel*, 140 NLRB 226, 229 (1962), *enfd.* 328 F.2d 600 (5th Cir. 1964), *cert. denied* 379 U.S. 817 (1964); *Burnett Construction Co.*, 149 NLRB 1419, 1421 (1964), *enfd.* 350 F.2d 57 (10th Cir. 1965).

ORDER

The National Labor Relations Board orders that the Respondent, Multimedia KSDK, Inc., St. Louis, Missouri, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to bargain with International Brotherhood of Electrical Workers, AFL-CIO, Local No. 4 as the exclusive bargaining representative of the employees in the bargaining unit.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) On request, bargain with the Union as the exclusive representative of the employees in the following appropriate unit on terms and conditions of employment and, if an understanding is reached, embody the understanding in a signed agreement:

All producers, assignment editors and tape coordinators employed by Respondent in the news department, EXCLUDING directors, managers, engineers, camera persons, talent employees, office clerical and professional employees, guards, managerial employees, and supervisors as defined in the Act and all other employees.

(b) Within 14 days after service by the Region, post at its facility in St. Louis, Missouri, copies of the attached

notice marked "Appendix."³ Copies of the notice, on forms provided by the Regional Director for Region 14, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since December 1, 1999.

(c) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. February 29, 2000

John C. Truesdale, Chairman

Sarah M. Fox, Member

Wilma B. Liebman, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

APPENDIX

NOTICE TO EMPLOYEES

POSTED BY ORDER OF THE

NATIONAL LABOR RELATIONS BOARD

An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT refuse to bargain with International Brotherhood of Electrical Workers, AFL-CIO, Local No. 4 as the exclusive representative of the employees in the bargaining unit.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, on request, bargain with the Union and put in writing and sign any agreement reached on terms and

³ If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

conditions of employment for our employees in the bargaining unit:

All producers, assignment editors and tape coordinators employed by us in the news department, EXCLUDING directors, managers, engineers, camera persons, talent employees, office clerical and professional employees, guards, managerial employees, and supervisors as defined in the Act and all other employees.

MULTIMEDIA KSDK, INC.